



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a resolution authorizing the City Manager to enter in sole-source service agreement with IMServ to provide Internet load data for large industrial electric customers (\$17,000)

MEETING DATE: June 5, 2002

PREPARED BY: Electric Utility Director

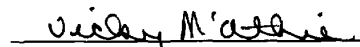
RECOMMENDED ACTION: That the City Council authorize the City Manager to execute a professional services agreement with IMServ to provide load shape information for large industrial electric customers through an Internet Web-based service.

BACKGROUND INFORMATION: This will allow the Electric Utility Department (EUD) industrial customers to directly monitor their energy use information at a minimum on a daily basis through an Internet Web-based service as a pilot program. A near real-time access of information is possible. This is much more flexible and timely than the current EUD process. Currently, these customers receive graphics either by e-mail or manually once a month. This timely, convenient method of monitoring their energy use will facilitate energy efficiency by large EUD customers.

IMServ is in a unique position to provide this as a sole-service for the following: communication capability across all EUD meter types, local technical support and only service serving other municipals such as Roseville and Palo Alto. Outside funding has been applied for from the California Energy Commission (CEC). If CEC funding occurs, this will reduce EUD cost by the CEC funding. Otherwise, staff recommends that the EUD fund the \$17,000.

FUNDING: 161652

Funding Approval:


Vicky McAthie, Finance Director



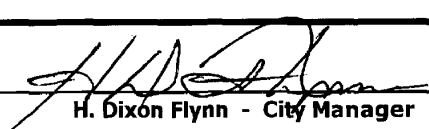
Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power Supply and Rates Manager

ANV/BP/lst

C: City Attorney

APPROVED:


H. Dixon Flynn - City Manager

IMServ - AGREEMENT TO PROVIDE ENERGY RELATED SERVICES

PARTIES

The Parties to this Agreement are:

The City of Lodi Electric Utility Department, a municipal electric utility under the laws of the State of California, having a place of business at 1331 S. Ham Lane, Lodi, California 95242. (**LODI**).

and:

IMServ North America LLC, a Delaware limited liability company and an Invensys Group company, having a place of business at 8601 Six Forks Road, Raleigh, North Carolina 27615 (**IMSERV**).

Under the terms and conditions hereinafter set forth, and in consideration of payment by **LODI** of the Fees therefore, **IMSERV** hereby agrees to provide to **LODI**, and **LODI** hereby agrees to purchase from **IMSERV**, the Energy Related Services set forth in the Service Pricing proposal attached hereto as Exhibit A..

1. Term

This Agreement is effective from the date on which **LODI** first purchases Services from **IMSERV**, and shall continue until terminated by either party for any reason or no reason at any time upon sixty (60) days prior written notice to the other party. In addition, either party may terminate this Agreement at any time if the other party, after written notice of non-compliance with any of the provisions of this Agreement, fails to cure such non-compliance within 30 days of receipt of such notice. Upon termination of this Agreement, **LODI** will pay **IMSERV** all amounts then due.

2. Additions to Services Schedule

From time to time, **LODI** may request additional Energy Related Services to be provided by **IMSERV** under the terms of this Agreement. Upon acceptance by **IMSERV**, the description and cost of any additional or revised Energy Related Services shall be reflected in a revision to Exhibit A and will be effective in **LODI's** next billing statement.

3. Modifications to Agreement

All modifications to this Agreement shall be in writing. **IMSERV** may modify the terms of this Agreement from time to time by sending such revisions to **LODI** at least thirty (30) days prior to such modification's effective date. **LODI's** acceptance of further Energy Related Services from **IMSERV** after the modification's effective date, without first notifying **IMSERV** of objections to such modifications, shall evidence of **LODI's** acceptance of such modified terms which shall thereafter be an integral part of this Agreement. Notwithstanding any other terms of this Agreement, any permitted increase in pricing of Energy Related Services shall not become effective until at least sixty (60) days after receipt by **LODI** of written notice from **IMSERV** of such price increase. The terms and conditions of this Agreement shall govern if there are any inconsistent or conflicting terms and/or conditions associated with any accompanying or subsequent purchase order or agreement.

4. Payments

(a) All payments due **IMSERV** shall be paid within thirty (30) days of being invoiced. If any payment due **IMSERV** has not been paid within thirty (30) days, **IMSERV** may charge interest on such amounts at the rate of 1.5% per month or any portion thereof, on all outstanding balances. All payments will be applied first against the oldest invoice. In the event that legal action is required to collect any amounts due to **IMSERV**, **LODI** shall pay all collection expenses, including reasonable attorney's fees.

(b) All dollar amounts referred to herein shall be in U.S. dollars.

5. Warranties, Remedies, and Limitation of Liabilities

(a) **Product Warranties:** All manufacturers' warranties for products sold to **LODI** by **IMSERV** pursuant to this Agreement are hereby assigned to **LODI**, its successors and assigns for their benefit. **IMSERV** makes no warranties with respect to any such products.

(b) **Services Warranty:** **IMSERV** warrants that the Services shall, at the time of acceptance, conform to the requirements of Exhibit A, and shall be performed in a professional and workman like manner, free from defects in workmanship.

THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.

REMEDIES:

IMSERV's only obligation, and **LODI's** exclusive remedy, under the Product Warranties shall be limited to processing **LODI's** warranty claims with the applicable manufacturers under the terms of the latter's respective warranties. **IMSERV's** only obligation, and **LODI's** exclusive remedy, under the Service Warranty shall be, at **IMSERV's** sole cost and expense, to correct or re-perform any defective or non-conforming Services to assure compliance with requirements of this Agreement.

LIMITATION OF LIABILITY:

IN NO EVENT SHALL IMSERV'S LIABILITY EXCEED THE AMOUNT PAID TO IMSERV UNDER THIS AGREEMENT.

IMSERV SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SERVICES OR PRODUCTS PROVIDED HEREUNDER, EVEN IF IMSERV HAS BEEN ADVISED THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM FOR RECOVERY IS BASED ON (I) BREACH OF WARRANTY OR CONTRACT, OR (II) NEGLIGENCE, STRICT LIABILITY OR OTHER TORT.

THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED HEREIN IS YOUR EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

6. Force Majeure

Neither Party shall be liable for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Party's control, including, but not limited to, suspension of **LODI's** contract with **LODI's** customer, acts of God, flood, fire, volcano, war, labor disputes, court order or

governmental acts; provided that such Party shall use its reasonable efforts to promptly overcome or mitigate the delay for failure to perform. Any Party whose performance is delayed or prevented by any cause or condition within the purview of this section will promptly notify the other Party thereof, the anticipated duration of the delay or prevention, and the steps being taken to overcome or mitigate the delay or failure to perform.

7. Patent Warranty and Indemnity

IMSERV warrants that the performance of the services by **IMSERV** shall not infringe any United States Letters Patent. **IMSERV** shall, at its own expense, protect, defend, hold harmless and indemnify **LODI** and its successors, affiliates, agents and customers from and against any and all claims, demands, actions, judgments, decrees, losses (including attorneys fees) arising out of any actual or alleged infringements of any patent by reason of the performance of the services. Provided it is given reasonable notice of the pendency of any such suit, claim or demand, **IMSERV** will, at its option and expense, either (i) procure for **LODI** the right to continue to have the services performed; (ii) arrange to modify the services so they become non-infringing, but remain acceptable to **LODI** or (iii) assume the defense of **LODI** against any such suit, claim or demand. If **IMSERV** assumes defense, **IMSERV** will not make any admission of patent validity or enter into settlement which may impose any liability upon **LODI** and shall seek its views and desires, but **IMSERV** shall have sole responsibility for and control of the defense and settlement of such suit, claim or demand.

Notwithstanding the above, if any injunction against the performance of the services results in interruption of the delivery of the services to **LODI**, then **LODI**, at its option, may terminate this Agreement without prejudice to any other rights it may have pursuant to this Agreement or otherwise.

8. Confidential Information

The Parties acknowledge that certain information exchanged between them pertaining to this Agreement, including information regarding technology, developments, market conditions, competitive conditions, pricing, customer accounts and the like, constitutes confidential information, regardless of the medium of expression of the information. Such information is and shall be held in confidence by the Parties. The purpose of the exchange of the information is to allow the Parties to meet their obligations and responsibilities under this Agreement, and the party receiving the information shall use it only for such purpose.

Except as otherwise provided below, during the term of this Agreement and for a period of three (3) years following its termination or expiration, the party receiving any confidential information, and its employees, shall not, except with the prior consent of the disclosing party, use, divulge, disclose or communicate, or cause or permit any other person or entity to use, divulge, disclose or communicate, to any person, firm, corporation or entity, in any manner whatsoever, any confidential information of the disclosing party. Each party shall use the same degree of care to avoid publication or dissemination of the confidential information disclosed to such party under this Agreement as it employs with respect to its own confidential information, but at all times shall use at least reasonable care to protect against disclosure.

Confidential information does not and shall not include information:

- (a) Was already known to the receiving party at the time such information is disclosed by the other party;
- (b) Was or became publicly known through no wrongful act of the receiving party;
- (c) Was rightfully received from a third party without restriction;
- (d) Was independently developed by the receiving party;
- (e) Was furnished to a third party by the party disclosing such information under this Agreement without a similar restriction on the third party's rights;

IMServ

- (f) Was approved for release by written authorization of the party disclosing such information under this Agreement; or
- (g) Was required by a legal or financial reporting requirement to be disclosed.

The foregoing to the contrary notwithstanding, information pertaining to **LODI** customers and customer account acquired by **IMSERV** in its performance of services hereunder may not be disclosed at anytime to any third party without the prior written consent of **LODI** or **LODI's** customer.

9. Notices

All notices pursuant to this Agreement shall be sent to the party at the address set forth above or to such other location as a party may hereafter be advised. All notices shall be either (a) personally delivered, sent by certified mail or commercial overnight delivery service (Airborne, DHL, FedEx, UPS) or by U.S. Postal Service Express Mail, in which case they shall be effective upon actual delivery; (b) sent by facsimile ("fax") in which case they shall be effective upon receipt of a confirmation fax; or (c) sent via electronic mail ("e-mail") in which case they shall be effective upon receipt of a confirmation, or reply, e-mail.

10. No Waiver

No waiver by either party of the breach by the other of any provision of this Agreement shall constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No failure to exercise, and no delay in exercising, any right, power or privilege under this Agreement on the part of either party shall operate as a waiver of any right, power or privilege hereunder. No single or partial exercise of any right, power or privilege hereunder shall preclude the further exercise thereof.

11. Choice of Law

This Agreement and all matters relating to the construction, interpretation, and enforcement thereof shall be governed by the laws of the State of California.

12. Entire Agreement

This Agreement and any modifications thereof constitute the entire agreement between the Parties relating to the subject matter hereof. No additional or different terms or conditions contained in any purchase order issued by **LODI** shall be binding on **IMSERV** unless specifically negotiated with and accepted in writing by an authorized officer of **IMSERV**.

13. Sever Ability

If any clause or provision of this Agreement shall be held to be invalid, illegal or unenforceable under any applicable law, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

14. Independent Contractor

The Parties intend that **IMSERV** is, and shall be deemed to be, an independent contractor, responsible for its respective acts and all nations, and that there is no intention to establish a relationship of either employer-employee, principal-agent, partnership, joint venture, or any other similar relationship between **LODI** and **IMSERV**. Neither of the Parties is authorized to obligate or bind the other party in any respect.

IMServ

IMServ North America LLC

By: _____

Its: _____

Date: _____

CITY OF LODI

By: _____
H. Dixon Flynn, City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Randall A. Hays, City Attorney

ATTEST

By: _____
Susan Blackston, City Clerk

Exhibit A

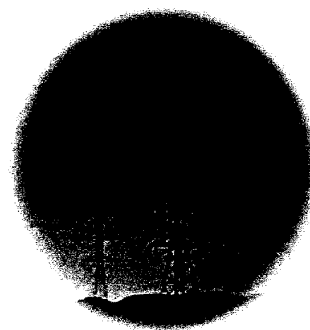
The services required based upon the attached IMSERV pricing proposal are the following:

- Up to 40 meters for one year's worth of historical data by the Data Import Service
- Up to 40 meters for MDMA service
- Up to 40 meter for the Star Web service



Attachment as part of Exhibit A

City of Lodi



**IMServ Proposal for
Energy Information
Services**

June 5, 2002

IMServ®

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INTRODUCTION

IMServ is pleased to provide City of Lodi with this proposal for energy information services. IMServ is certified as a Meter Data Management Agent in all three UDC territories in the state of California.

IMServ Information Services, along with IMServ Europe, IMServ FieldTech, IMServ Meterpoint, and IMSoftTech, make up Invensys Management Services (IMServ). IMServ is a leading energy services company that helps electric, water, and natural gas utilities, energy service providers, and corporations achieve greater operating efficiencies, manage risk, and deliver superior service by providing a full spectrum of metering services, end-to-end data management, and billing solutions.

IMServ is an operating company of Invensys plc, a global electronics and engineering company created by the merger of BTR plc and Siebe plc on February 4, 1999. With its head office in London, England and over 100,000 employees, Invensys operates globally through four divisions - Intelligent Automation, Industrial Drive Systems, Power Systems and Controls. IMServ is a business unit of the Invensys Energy Solutions group, which is part of the Controls division.

QUALIFICATIONS

As a certified MDMA operating in both the regulated and deregulated markets, IMServ has the experience and resources to implement flexible solutions that can be economically and quickly deployed anywhere. In preparation for your market opportunity, IMServ is excited to provide City of Lodi with alternatives for its energy information services.

IMServ maintains a qualified professional staff with extensive experience servicing the energy and utilities industries. With expertise in data collection and communication technologies such as the Itron/UTS MV-90 system, IMServ uses the same technology as that of its UK office, IMServ Europe (formerly UKDCS). IMServ Europe has international renown as the leader in the collection and processing of data from interval meters. As the MDMA for the UK, IMServ Europe runs the largest meter data collection system in the world, reading and processing interval data from over 86,000 meters every day. This data accounts for over 50% of the electricity used in the UK with a wholesale value in excess of \$7 billion annually.

The combined experience, resources, and product knowledge puts IMServ in a unique position to provide City of Lodi with the highest quality data services.

REFERENCES

IMServ has experience providing various energy information services to different types of customers. Following are some examples that represent our experience:

Customer	Contact Name	Phone Number	Scope of Services
CalPol	Don Sutphin	(415) 227-1011 x103	IMServ retrieves distribution loss factors, dynamic load profiles, and monthly consumption values from UDC servers, disaggregates monthly consumption values using dynamic load profiles, applies distribution loss factors, aggregates by demand zone, and supplies data to the scheduling coordinator
Northeast Utilities	Christina Jamharian	(860) 665-2305	IMServ retrieves data files from Northeast Utilities, validates data, and posts to StarWeb
TransData	Steve Clegg	(972) 470-9993	IMServ collects data from TransData meters over ARDIS network, validates, and posts to StarWeb
Mission Energy	Kenneth Lackey	(949) 798-7427	Generating plant in Pennsylvania – IMServ collects meter data daily, validates, and produces an Excel spreadsheet daily

SCOPE OF SERVICES/PRICING

This section includes the proposed scope of the services that IMServ can provide to City of Lodi , as well as the cost breakdown for each service.

IMServ is proposing services in the following areas:

1. MDMA services
2. Data import services plus VEE
3. Meter data aggregation services
4. Web-based data analysis (StarWeb)
5. Energy Data On-demand (EDO)

The following apply for all quoted services:

1. Pricing quotes are effective for 60 days.
2. Payments are net 30 days.
3. All contracts require a written termination notice of 60 days.

MDMA Services

IMServ will provide MDMA services to City of Lodi , which includes the following:

- Manage the meter reading schedule
- Read and retrieve meter data
- Validate, edit and estimate meter data per the state and/or City of Lodi requirements
- Calculate usage
- Format the interval data
- Store and manage the data on the IMServ server
- Deliver the data to City of Lodi in an agreed upon format
- Provide meter management records where applicable. This includes when the meter was installed, meter device type, meter service history, and meter service parameters.

MDMA Pricing

MDMA Services	Cost Per Meter Per Month
Data Collection with VEE	\$12.00
	One-time Cost Per Meter
Initial Service Setup Fee (One-time charge for the first 50 meters. Setup fee is waived for over 50 meters.)	\$25.00
	Cost Per Month
Minimum Monthly Service Fee*	\$250.00
*Fee will apply only if charges for MDMA services do not exceed \$250.00.	

Notes:

1. Data collection does not include the cost of phone installation or monthly phone fee, but does include the long distance charges to interrogate the meters.
2. Validation, Editing, and Estimation are included in the above pricing.
3. Daily data delivery will be business days only. Weekend and holiday files will be sent on the next business day.

Data Import Services

If City of Lodi chooses to read its own meters, IMServ can still import and process the data. The meter data import services include the following:

- Importing the raw meter data collected by City of Lodi into IMServ's data center in Raleigh, NC in HHF format.
- Validation, Editing, and Estimation (VEE)
- Storing and managing the data on the IMServ server
- Delivery of the data to City of Lodi in an agreed upon format

Meter Data Import Pricing

Data Import Services	Cost Per Meter Per Month
Raw Meter Data Import with VEE (daily, weekly or monthly)	\$8.00
	One-time Cost Per Meter
Initial Service Setup Fee (One-time charge for the first 50 meters. Setup fee is waived for over 50 meters.)	\$25.00

Note: For accurate estimation, IMServ will require that City of Lodi provide IMServ with three months of historical data.

Data Aggregation Services

Aggregation services consist of the monthly aggregating for ESP the Direct Access load of participating end use customers. It includes applying daily class load profiles and distribution line loss factors.

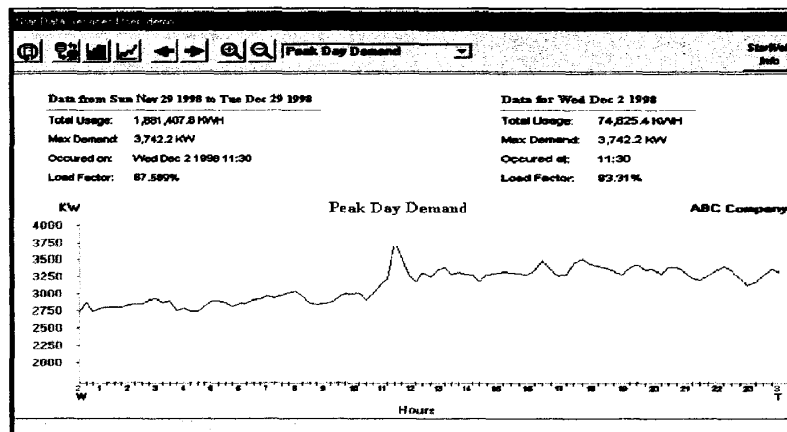
Data Aggregation Pricing

Aggregation Services	Cost
Aggregation set-up charge (one-time charge)	\$1,500.00
Aggregation of Direct Access Customer Loads	Cost per Meter Per Month
Aggregation of monthly meter reads (Up to 40,000 meters)	\$.50
Aggregation of interval meter reads (Up to 40,000 meters)	\$2.00

Aggregation Reports	Cost Per
Daily Discrepancy Report (Supplied with each DAT file, detailing missing or extraneous reads)	\$250.00
Monthly Discrepancy Report (Details all the accounts included in a particular report run for that month)	\$100.00

StarWeb Services

IMServ's StarWeb service offers an Internet-based solution that can provide City of Lodi with access to secure, detailed interval load data from a PC workstation equipped with Microsoft Explorer or Netscape Navigator. This service presents the energy data in an easy-to-read graphical format available for viewing, graphing and analysis. The user, with a secure User ID and Password, can download the data to a local PC in "tab-separated value" format. StarWeb has a high level of system security to protect data integrity.



StarWeb Peak Day Demand Graph

StarWeb Pricing

StarWeb Services – Primary Account	
Service setup fee (One-time charge for the first 50 meters. Setup fee is waived for over 50 meters.)	\$15.00 per meter
StarWeb Access Charge	
0 – 300 meters	\$6.00 per meter per month
Over 300 meters	\$4.00 per meter per month
Multiple Account Access To Meter Data	

For each additional user, there will be a one-time charge for setting up a user ID and password.	\$5.00 per user
For each additional access to meter data	\$1.00 per meter per month

Notes:

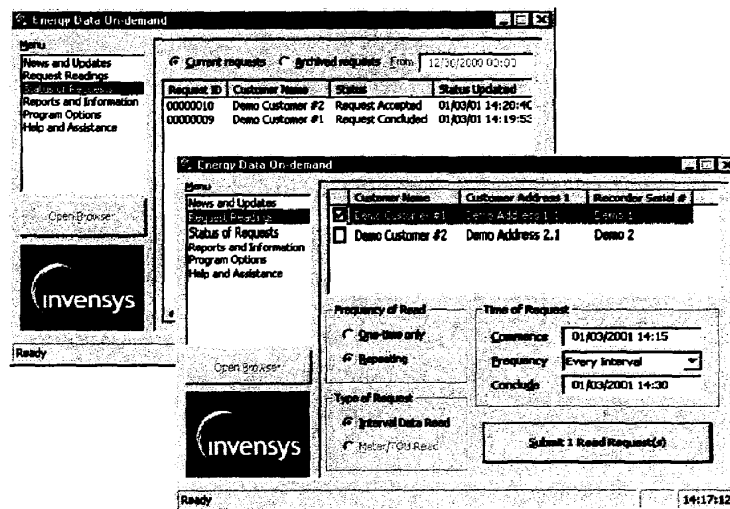
1. Above prices are effective if IMServ is providing the data collection services.
2. If the quantity of meters starts above 300, all meters will be charged at \$4.00 per meter per month.
3. Customization of the login screen is available, and can be quoted according to your specific requirements.

Energy Data On-demand (EDO) Services

EDO services are available for meters where IMServ is already providing data collection and StarWeb services. Customers can select a meter or group of meters and automatically schedule them to be read immediately or on a user-specified frequency basis. Within minutes, the actual meter read can be viewed in EDO, or can be analyzed via StarWeb.

EDO offers features that include:

- Customizable meter reading requests to include one-time and repeating with a user-defined frequency and duration
- Ability to read a single meter, selected meters, or a defined "batch" of meters
- Status screen that continuously displays the status of each read request (Accepted, Processing, Concluded), with optional audible alert
- Default or user-configurable setup and operation
- Secure communication between the desktop application and the server via the Internet
- Customizable branding of the desktop application, providing for a seamless interface between the utility or energy provider and their customers



EDO Pricing

On-Demand Meter Reading	Cost Per Meter Read
On-Demand Meter Reads (First 6 total on-demand meter reads included in the \$12.00 monthly data collection charge.)*	\$.50
*Monthly data collection and StarWeb pricing still applies.	

Note: EDO was designed as an adder to StarWeb. If EDO services are purchased without StarWeb, IMServ will analyze the format and method required to deliver the on-demand meter data to City of Lodi. Additional development costs may be incurred.

CUSTOMER SERVICE COMMITMENT

IMServ will provide access to technical assistance for the MDMA server 24 hours a day, 365 days a year. Our customer service staff will be available to address questions and concerns on data availability, data corruption and adjustments, and systems technical support.

IMServ provides the highest level of quality support, with the following services available:

- A dedicated IMServ Customer Service e-mail
- Help desk support during normal business hours and business days
- Available pager response outside business hours

IMServ realizes that needs change as customers grow. We are willing to work with our customers to implement new ideas to provide better services to our customers, and welcome any suggestions to improve and expand our services offering.

RESOLUTION NO. 2002-118

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE
CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES
AGREEMENT WITH IMServ TO PROVIDE LOAD SHAPE
INFORMATION FOR LARGE INDUSTRIAL ELECTRIC CUSTOMERS

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NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize the City Manager to execute a professional services agreement with IMServ to provide load shape information for large industrial electric customers through an Internet Web-based service.

Dated: June 5, 2002

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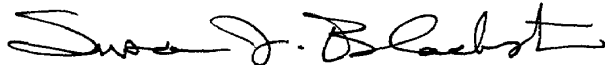
I hereby certify that Resolution No. 2002-118 was passed and adopted by the Lodi City Council in a regular meeting held June 5, 2002 by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk